



TO: WIB Chairs  
WIB Directors

FROM: Alan D. Degner  
Commissioner

DATE: April 11, 2003

SUBJ: DWD Policy 2002-34  
Sanctions Policy

RE: All funding streams that flow through the Workforce Investment  
Boards

Frank O'Bannon, Governor  
Alan D. Degner, Commissioner  
  
Dept. of Workforce Development  
Indiana Government Center South  
10 North Senate Avenue  
Indianapolis, IN 46204-2277  
Phone: 317/232-7670  
FAX: 317/233-4793  
TDD: 317/232-7560  
<http://www.workforce.IN.gov>  
An Equal Opportunity Employer

### **Purpose**

To provide the State's approach and guidance concerning those instances when sanctions may need to be implemented. This policy contains no substantial changes from DWD Communication 98-59

### **Rescission**

DWD Communication 98-59, dated May 5, 1999, and entitled, *Revised Sanctions Policy*.

### **Content**

The Department of Workforce Development (DWD) is fully supportive of the local **workforce development** system. Deficiencies are identified through the State's oversight role. Technical assistance, clarification, and corrective action opportunities will be offered prior to sanctioning.

The policy applies **but is not limited to** program funded under the Workforce Investment Act (WIA) Title I Adult, Youth, and Dislocated Worker (including National Emergency Grants); **state workforce development funding, including Regional Skill Alliance contracts**; and Wagner-Peyser (WP) Act funding.

#### 1. **Overview**

##### A. **Responsibility and Authority**

WIA indicates that the Governor is responsible for all funds granted to the State under WIA Title I Adult, Dislocated Worker, and Youth. In turn, DWD holds the chief elected official **liable** for all WIA funds received, including the proper expenditure, accounting and reporting of such funds. The law and its accompanying regulations also makes the Governor responsible for monitoring subrecipient compliance with WIA, pertinent rules, and other applicable federal and State laws and policies.

The Wagner-Peyser Act and its accompanying regulations also make the Governor responsible for all funds granted to the State. Through integrated service contracts, the Governor holds grantees accountable for the Wagner-Peyser funds they receive.

The same thing is true for other programs under which DWD grants/contracts fund, as listed above.

#### B. Management and Compliance Requirements

The requirements DWD uses for managing program grants are contained in:

- All federal and state statutes, regulations **and policies** relevant to the specific **funding source**.
- DWD policies, directives and instructions including the 5-Year Unified State Plan, local workforce development plan instructions, applicable OMB Circulars, procurement policies and the Participant Management Information System (PMIS) Manual; and
- The grant/contract (including the narrative or local workforce development plan and the grant/contract agreement – boilerplate, budget, and attachments) or interagency agreement.

#### C. Oversight Activities

DWD's grant oversight processes involve ongoing desktop and field monitoring to identify strengths and weaknesses. Deficiencies are addressed through technical assistance and corrective action requirements. In this manner, the state affords grantees maximum opportunity to address problem areas, comply with legal mandates, and earn incentive awards.

DWD will assess adherence to grant management requirements throughout the local workforce development plan or grant period by various review processes. DWD may require grantees to take certain corrective actions, including the requirement to develop plans to correct deficiencies or situations which, if not corrected, could result in the grantee not complying with or continuing not to comply with the requirements of laws, regulations, or policies.

### II. Possible Violations For Which Sanctions May Be Imposed

DWD's intent is to be fully supportive of the local workforce development system. To that end, sanctions will be a last resort. Technical assistance, clarification, and reasonable corrective action opportunities will be offered first. There may be instances where technical assistance would not be appropriate and where progressive action may begin without technical assistance. There may also be instances where a violation has not yet occurred, but the grantee will be notified of the potential problem so that corrective action may be taken on the recipient's own volition.

Problems in the administration and management of resources may include failure to meet performance outcome levels, mismanagement **of resources**, and/or non-

compliance. Findings may be identified through desktop monitoring, on-site monitoring, auditing, or other means. The seriousness and frequency of a violation will be considered in determining the sanction(s) to be applied.

An essential prerequisite for issuance or continuation of a grant is a good faith response by the grantee to DWD's corrective action or clarification requirements. Failure to respond in good faith to DWD's corrective action or clarification requirements will lead to progressive sanction activity.

Lack of good faith is defined as:

- 1) The grantee does not respond to the corrective action plan or clarification requirements within the timeframe allowed (or fails to negotiate an acceptable timeframe);
- 2) The response is; or
- 3) The response is adequate, but the **grantee** fails to fully implement the corrective action plan or implement/follow the clarification provided within the timeframe agreed upon.

Any other violations of applicable laws, regulations and/or policies for the various funding sources with which grantees are bound to comply may result in the imposition of sanctions.

The deliberateness, seriousness, and/or frequency of the violation will determine the precise nature of the sanction. In situations where sanctions are applied, the grantee will be notified and will be provided with an appropriate opportunity to respond and appeal as outlined below.

DWD reserves the right to mandate that program funds to include **WIA** incentive awards (or a portion thereof) be used for technical assistance in accordance with a DWD approved corrective action plan to correct compliance problems when certain sanctionable activities have taken place. DWD may also defer granting the **WIA** incentive award until deficiencies are addressed and improved. The maximum time that the incentive award may be deferred is one year from the end of the program year for which the incentive award is granted (in other words, if the incentive award is for **PY'01** performance, the grantee would have until the end of **PY'02** to correct the problem(s) and claim the incentive award). If the deficiencies are not corrected within the allowable timeframe, award of the deferred **WIA** incentive is forfeited.

### III. Sanctions Notification Process

Before the imposition of any grantee sanctions, DWD will transmit a letter to the grantee indicating the violation. The letter will address the possible sanctions if the violation or problem is not remedied, appropriate clarifications are not submitted and adhered to, or the appropriate needed corrective action has not yet been undertaken. The letter may include a request for a meeting between the relevant parties and DWD to review the violation(s) and discuss appropriate corrective and other actions and will

also include timeframes for instituting corrective action. This meeting should take place within 15 working days after receipt of the letter as indicated by certified mail.

If this meeting or the grantee's response and corrective action plan fails to resolve the difficulty, DWD will notify the grantee and relevant parties (with copies to the WIB Chair) of its intent to impose a specific sanction. **If the local elected official has delegated the signatory authority to a fiscal agent**, a copy shall also be sent to the local elected official. Such notification shall be received by the parties involved at least ten (10) working days before the scheduled imposition of sanctions, as evidenced by certified mail. The letter will also reiterate the violation, the corrective action needed, and the appeal process.

If satisfactory evidence of needed corrective action initiation is presented to DWD within this ten (10) working day period; DWD may postpone the initiation of sanction until either the completion of the action within the DWD approved timelines or attainment of the state deadline without completion of the action. In the former case, the implementation of the sanctions may be lifted; in the latter, it will be imposed.

#### IV. Sanctions

Sanctions that may be imposed by the State upon grantees:

A. Imposition of a reorganization plan that may include:

B.

- Decertifying the local board involved.
- Prohibiting the use of certain eligible providers of training or one-stop partners identified as having poor performance.
- Selecting an alternative entity to administer the program for the local workforce service area involved.
- Merging the workforce service area into one or more other existing workforce service areas.
- Other relevant changes the Governor determines to be necessary, to secure compliance.

B. Restriction from bidding on competitive or discretionary funds.

C. Repayment of amounts resulting from violations of cost imitations/ minimums/maximums and/or failure to match reported expenditures

If the grantee does not meet cost limitations, such overages or shortages must be repaid by **non-federal dollars**.

If a WIA grantee does not meet cost limitations, the grantee may lose eligibility for bidding on discretionary project grants

- D. Disapproval of requests for specific fund draw downs until the violation or deficiency has been corrected.
- E. Disapproval of requests for all fund draw downs until the violation or deficiency has been corrected.
- F. Disallowance and repayment of costs associated with the particular violation or deficiency.
- G. Revocation of all or any part of the grant agreement affected.
- H. Revocation of a local workforce development plan until conditions, violations, or deficiencies have been corrected.

V. Sanctions/Parameters

Section 181 of WIA details the criteria/parameters that the U.S. Secretary of Labor uses in determining when to apply sanctions. In conformance with this federal law, Indiana is establishing a complementary state policy. The State considers its grantees accountable for actions taken, directly or indirectly, through service providers. As such, the State will look to its grantees for corrective action, even where the violation of deficiency involved a service provider. Specifically, the State will continue to:

- Undertake periodic review and monitoring of its grantees' activities for compliance with **federal and state legislation, regulations, and policies.**
- Identify and notify grantees of problem areas discovered during review and monitoring and outline action required, including time schedules.
- Continue to monitor implementation of corrective actions for resulting improvements in the deficient area(s). Where corrective action is on going (e.g., debt collection for misspent funds), no further action or sanction would be imposed unless corrective action was not completed or had failed.

The State may waive the imposition of certain sanctions if it determines there has been adequate grantee action to:

- Establish and adhere to an appropriate system for the award and monitoring of contracts with subgrantees, which contains acceptable standards for ensuring accountability.
- Enter into a written contract with such subgrantee that establishes clear goals and obligations in unambiguous terms.

- Act with due diligence to monitor the implementation of the subgrantee contract, including carrying out the appropriate monitoring activities including audits at reasonable intervals.
- Take prompt and appropriate corrective action upon becoming aware of any evidence of a violation of **federal and state legislation, regulations, and policies** by such grantee.

#### VI. State Appeal Process

Appeals may be made to the Commissioner of DWD with ten (10) working days after receipt of notification of pending sanction. Such an appeal, however, will not forestall the initiation of sanctions (unless the Commissioner extends the deadline).

If satisfactory evidence of needed corrective action initiation is presented to DWD within this ten (10) working day period, DWD may postpone the initiation of sanctions until either the completion of the action within the DWD approved timelines or attainment of the State dead line without completion of the action. In the former case, the implementation of the sanctions may be lifted; in the latter, it will be imposed.

Questions concerning the sanction process may be directed to Patrick J. Vercauteren, Deputy Commissioner, Policy, Planning and Evaluation at 317/232-7182 or by email at [pvercauteren@dwd.state.in.us](mailto:pvercauteren@dwd.state.in.us)

#### **Effective Date**

This policy is effective upon the signature of the Commissioner.

#### **Ending Date**

The ending date of the policy is June 30, 2004.

#### **Ownership**

WIA Administration.

#### **Action**

Local administrators are requested to distribute this policy to relevant parties